

***Effective 5/13/2014***

***Superseded 7/1/2015***

**24-4-114 Transfer and sharing procedures.**

- (1)
- (a) Seizing agencies or prosecuting attorneys authorized to bring forfeiture proceedings under this chapter may not directly or indirectly transfer property held for forfeiture and not already named in a criminal indictment to any federal agency or any governmental entity not created under and subject to state law unless the court enters an order, upon petition of the prosecuting attorney, authorizing the property to be transferred.
  - (b) The court may not enter an order authorizing a transfer under Subsection (1)(a) unless:
    - (i) the conduct giving rise to the investigation or seizure is interstate in nature and sufficiently complex to justify the transfer;
    - (ii) the property may only be forfeited under federal law; or
    - (iii) pursuing forfeiture under state law would unreasonably burden prosecuting attorneys or state law enforcement agencies.
  - (c) A petition to transfer property to a federal agency under this section shall include:
    - (i) a detailed description of the property seized;
    - (ii) the location where the property was seized;
    - (iii) the date the property was seized;
    - (iv) the case number assigned by the seizing law enforcement agency; and
    - (v) a declaration that:
      - (A) states the basis for relinquishing jurisdiction to a federal agency;
      - (B) contains the names and addresses of any claimants then known; and
      - (C) is signed by the prosecutor.
  - (d) The court may not authorize the transfer of property to the federal government if the transfer would circumvent the protections of the Utah Constitution or of this chapter that would otherwise be available to the property owner.
  - (e)
    - (i) Prior to granting any order to transfer pursuant to this section, the court shall give any claimant the right to be heard with regard to the transfer by the mailing of a notice to each address contained in the declaration.
    - (ii) If no claimant objects to the petition to transfer property within 10 days of the mailing of the notice, the court shall issue its order under this section.
    - (iii) If the declaration does not include an address for a claimant, the court shall delay its order under this section for 20 days to allow time for the claimant to appear and make an objection.
  - (f)
    - (i) If a claimant contests a petition to transfer property to a federal agency, the court shall promptly set the matter for hearing.
    - (ii)
      - (A) The court shall determine whether the state may relinquish jurisdiction by a standard of preponderance of the evidence.
      - (B) In making the determination, the court shall consider evidence regarding hardship, complexity, judicial and law enforcement resources, and any other matter the court determines to be relevant.
- (2) All property, money, or other things of value received by an agency pursuant to federal law, which authorizes the sharing or transfer of all or a portion of forfeited property or the proceeds of the sale of forfeited property to an agency:

- (a) shall be used in compliance with federal laws and regulations relating to equitable sharing;
  - (b) may be used for those law enforcement purposes specified in Subsection 24-4-117(9); and
  - (c) may not be used for those law enforcement purposes prohibited in Subsection 24-4-117(10).
- (3) A state or local law enforcement agency awarded any equitable share of property forfeited by the federal government may only use the award money after approval of the use by the agency's legislative body.
- (4) Each year, every agency awarded any equitable share of property forfeited by the federal government shall file with the commission:
- (a) a copy of that agency's federal equitable sharing certification; and
  - (b) information, on a form provided by the commission, that details all awards received from the federal government during the preceding reporting period, including:
    - (i) the agency's case number or other identification;
    - (ii) the amount of the award;
    - (iii) the date of the award;
    - (iv) the identity of any federal agency involved in the forfeiture;
    - (v) how the awarded property has been used; and
    - (vi) a statement signed by both the agency's executive officer or designee and by the agency's legal counsel confirming that the agency has only used the awarded property for crime reduction or law enforcement purposes authorized under Section 24-4-117, and only upon approval by the agency's legislative body.